IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4218 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT AGRO INDUSTRIES CORPORATION LTD.

Versus

APPROPRIATE AUTHORITY

Appearance:

MR JP SHAH for Petitioners No. 1-2

MR AKIL QURESHI FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The petitioner No.1, a Company belonging to Government of Gujarat and the petitioner No.2, a partnership firm, have challenged the refusal of the respondent authority to grant " No Objection Certificate" under Section 269UC(4) of the Income Tax Act,1961 (hereinafter referred to as 'the Act'), for transferring immovable property sold by petitioner No.1 in favour of petitioner No.2.

2 The admitted facts are that petitioner No.1 owned property being land survey No.700, Part-II situated at District and Sub-district Chhani admeasuring 2 Acres & 25 Gunthas and a Cold Storage Plant constructed on the said land. Petitioner No.2, a partnership firm agreed to purchase the property in question for a consideration of Rs.30,00,001/- (Rupees Thirty lac and one only). The total consideration was paid off by the petitioner No.2 and after recording the factum of full payment vacant and peaceful possession of the entire property, inclusive of land and the factory were handed over to petitioner No.2 on 8/6/1989. It is necessary to note that the sale was effected after inviting tenders and accepting highest bid. It appears that no formal banakhat was entered into between the parties in view of the terms of tender and acceptance of the same and exchange of correspondence. After petitioner No.1 parted with the possession with petitioner No.2, on receiving full sale consideration, it approached the competent authority under the Urban Land (Ceiling and Regulation) Act, for seeking permission to sell property and ultimately on 26/3/1999, the said permission was received by petitioner No.1. Thereafter, both the petitioners jointly filed form No.37I under cover of letter dated 2/9/1999 as required by provisions of Chapter XXC of the Act read with relevant Rules. There was exchange of correspondence between the Appropriate Authority and petitioner No.1 and ultimately on 7/12/1999, the Appropriate Authority informed petitioner No.1 that it is not possible to act upon form No.37I filed by the petitioner, because the same was belated. According to the Appropriate Authority, though the transaction was entered into at a point of time when Vadodara was not a notified city for the purpose of Chapter XXC of the Act, the said Chapter was made applicable to Vadodara by Notification dated 14/3/1991 and hence, form No.37I was required to be furnished on or before 29/3/1991. The Appropriate Authority,therefore, held that form No.37I filed on 7/9/1999 was treated as never having been filed in terms of provisions of Section 269UC(4) of the Act. It is this communication that is challenged in the present petition.

3 Upon receipt of the aforesaid communication dated 17/12/1999, petitioner No.1 and petitioner No.2 executed properly stamped sale-deed and presented the same for registration before Sub-Registrar, Vadodara on 15/4/2000. However, the Sub-Registrar did not agree to register the said sale-deed in absence of "No Objection Certificate" from the Appropriate Authority. It is this refusal which prompted the petitioners to approach the Court.

4 We have heard Mr.J.P.Shah, learned Advocate appearing on behalf of the petitioners and Mr.Akil Qureshi, learned Standing Counsel appearing on behalf of the respondent. It was submitted on behalf of the petitioners that the Appropriate Authority must be directed to condone the delay, if any, in submitting the Form No.37I and further the Appropriate Authority must be directed to issue "No Objection Certificate" under Section 269 UL(1) of the Act. Mr.Qureshi opposing the submission stated that there was no provision under which the Appropriate Authority could condone the delay and the delay was almost of a period of ten years taking into consideration that the transaction had been finalised on 8/6/1989 and the petitioner had approached the authority on 2/9/1999. In the alternative, it was urged by Mr.Qureshi that even if it could be stated that the delay was due to sufficient cause, the Appropriate Authority must be permitted to exercise the discretion granted under the provisions of the Act viz. under Chapter XXC and should not be compelled to pass an order for granting "No Objection Certificate".

5 Having heard both the sides we feel that this is a case where the petitioners were acting under bonafide understanding of the provisions of the Act, in as much as when the transaction was effected on 8/6/1999, the provisions of Chapter XXC were not applicable to Vadodara city. They were prevented from executing final deed within the reasonable period of time from the said date because the time taken by the Competent Authority granting permission to sell of the property under the Urban Land (Ceiling and Regulations) Act,1976 and as soon as the said permission was received they approached the Appropriate Authority after taking into consideration the fact as to whether the said Chapter would be applicable to such transaction or not. The Appropriate Authority is therefore required to condone the delay, if any, in making the application in form No.37I and we hereby direct the Appropriate Authority to do so.

6 The Appropriate Authority shall revive Form

No.37I filed on 7/9/1999 on its file and deal with the same on merits after taking into consideration the various representations made on behalf of the petitioners as well as those that may be made hereafter. The Appropriate Authority shall pass necessary orders within a period of eight weeks from the date of the receipt of the certified copy of this judgment or a writ of this Court whichever is earlier after giving adequate opportunity of hearing ,in case any adverse view is to be taken, to the petitioners and it will be open to the authority to pass such order in accordance with law.

7 The petition is allowed accordingly. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(B.C.Patel, J) (D.A.Mehta,J)

m.m.bhatt